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The Fiduciary Principle as a Pillar of Customer Protection in the Indonesian Banking System

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ABSTRACT

This study examines the implementation of the fiduciary principle in banking regulations and customer protection mechanisms within Indonesia's banking sector. Employing normative legal research with a statutory and conceptual approach, this study highlights two key findings. First, the fiduciary principle is fundamental to the legal relationship between banks and customers, as stipulated in Article 2 of Law No. 7 of 1992. This principle is reinforced by regulations issued by Bank Indonesia (BI) and the Financial Services Authority (OJK) and is reflected in various aspects of banking operations. These regulations encompass consumer protection, personal data security, financial safeguards, and protection against unfair banking practices. Second, consumer protection mechanisms based on the fiduciary principle are implemented through instruments such as the Deposit Insurance Corporation (LPS), supervision by BI and OJK, and dispute resolution services, including direct complaints to banks, limited facilitation by OJK, and alternative dispute resolution through the Alternative Dispute Resolution Institution (LAPS).This study concludes that the fiduciary principle is crucial for fostering trust, ensuring operational integrity, and promoting stability in the banking sector.

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Introduction

Banking activities are among the most frequently conducted transactions by the public due to their significant impact on the economy. The duties and functions of banking are inherently tied to financial aspects, positioning banks as credit providers, fund collectors, and financial service providers. The legal framework governing banking in Indonesia is established through Law No. 7 of 1992 on Banking, Law No. 10 of 1998 on Amendments to Law No. 8 of 1997 on Banking, and Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector.

According to Law No. 4 of 2023, a bank is defined as "a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit or financing and/or other forms in order to improve the living standards of the general public." Based on this definition, banking has two primary functions: lending (fund collection) referring to the process of gathering funds from the public, and funding (fund distribution) referring to

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the process of channeling funds to the public.

To establish an effective and well-functioning banking system, the partnership between banks and customers is based on four fundamental principles that align with the foundations of economic democracy: the fiduciary principle, the principle of prudence, the principle of confidentiality, and the principle of knowing your customer (Usman, 2003). Banks are institutions that rely heavily on public trust and play a crucial role in a country's economic growth. Among these principles, the fiduciary principle is the most essential in banking operations, as banks are supported by the trust placed in them by customers to conduct various transactions.

This principle serves as the cornerstone of all banking activities, ensuring that customers believe in the bank's ability to provide the best services. By delivering high-quality and satisfactory services, banks can strengthen customer loyalty and enhance confidence in their financial offerings. The fiduciary principle not only enables banks to operate efficiently but also fosters public confidence in utilizing various banking services, ultimately contributing to economic stability and growth. When banks provide high-quality and satisfactory services, they can foster customer loyalty and strengthen trust in the financial system.

The fiduciary principle plays a significant role in establishing and maintaining the relationship between banks and their customers. Additionally, this principle aims to protect customers from harmful practices. Regulations based on the fiduciary principle ensure that banks act in good faith, maintain the confidentiality of customer information, and provide fair and transparent services. Ultimately, this principle also contributes to the overall stability of the financial system.

The implementation of the fiduciary principle also has a positive impact on economic efficiency. In a conducive environment with high levels of trust, financial transactions can be conducted more efficiently, improving access to financing, and driving overall economic growth. Therefore, the fiduciary principle is a crucial component of banking regulations, aimed at maintaining public confidence, protecting customers, ensuring financial system stability, and enhancing economic efficiency. Based on the background outlined above, this study aims to examine the fiduciary principle in banking in relation to customer protection mechanisms**.**

The author acknowledges that this research topic is not entirely new, as several previous studies have explored similar themes. One such study was conducted by Nikadek Dwi Anggianti and I Wayan Suardana, with the title Regulation of the Principle of Trust in Conducting Financial Transactions at the Bank (2019). Their research found that the fiduciary principle is already regulated in banking laws. Additionally, banks undertake preventive measures to maintain customer loyalty by ensuring high-quality services and a positive corporate image (Anggianti & Suardana, 2019).

The second relevant study The Fiduciary Principle as the Main Foundation of Banking Activities by Andika Persada Putera (2020). This research found that the fiduciary principle is fundamental to all banking operations, as banks cannot function without trust (Putera, 2020). The third study, conducted by Bernandete Sonia Surya Santika and Budi Santoso (2022), with the title The Practice of the Application of the Fiduciary Principle in Granting Unsecured Credit (KTA) to Company Employees.Their research highlights that unsecured loans (KTA) are primarily intended for individuals with low financial capacity or those living at or below the poverty line. In this context,

the fiduciary principle plays a crucial role in facilitating unsecured credit transactions (Santika & Santoso, 2022).

The key distinction between this study and previous research lies in its focus on the customer protection mechanisms based on the fiduciary principle in banking. While earlier studies primarily examined the regulatory framework and operational significance of the fiduciary principle, this research specifically explores how this principle serves as the foundation for customer protection measures. Accordingly, this study seeks to address the following research questions: first, How is the fiduciary principle implemented in banking activities and regulations in Indonesia?. The second What are the customer protection mechanisms regulated under the fiduciary principle in banking?.

Research Method

This research adopts a normative legal approach, examining legal principles and doctrines (Ali, 2009). The study employs statutory and conceptual approaches (Atikah, 2022). The legal materials used in this research consist of primary and secondary legal sources. Primary legal sources include Law No. 7 of 1992 on Banking, Law No. 10 of 1998 amending Law No. 7 of 1992 on Banking, Law No. 10 of 2023 on the Development and Strengthening of the Financial Services Sector, the Indonesian Civil Code (KUH Perdata), Financial Services Authority (OJK) Circular Letter No. 2/SEOJK.07/2014 on Consumer Service and Complaint Resolution by Financial Services Providers, and OJK Regulation No. 1/POJK.07/2014 on Alternative Dispute Resolution Institutions in the Financial Services Sector. Secondary legal sources consist of various literature, including journals, books, articles, and other references that provide explanations of primary legal sources and are relevant to the research topic.

The Fiduciary principle in Banking Activities and Regulations

The level of trust and commitment significantly influences interactions between a company and its business partners. Therefore, trust has a positive correlation with the intention to repurchase and customer loyalty. Trust and commitment serve as key mediating factors in establishing strong and long-term customer relationships with an organization (Morgan & Hunt, 1994).

Consumer trust encompasses consumers' understanding of an object, its attributes, and the benefits it offers. Based on this concept, consumer knowledge is closely related to consumer attitudes, as it serves as the foundation of consumer trust. Consumer trust involves the belief that a product possesses desirable characteristics and effectively utilizes those characteristics (Sumarwan, 2011).

In principle, trust is the foundation of the relationship between banks and their customers. Banks must apply the prudential principle in managing public funds, as any mismanagement or misallocation of funds can diminish public and customer trust in the bank. Conversely, customer loyalty in financial transactions tends to increase when trust is established by the bank. Therefore, the implementation of the fiduciary principle in banking is essential to mitigate potential business risks in the future. In banking credit, trust refers to the lender’s confidence that the loan will be repaid within the agreed-upon timeframe (Wijaya & Sukranatha, 2018). According to R. Tjipto Adinugroho, the fiduciary principle is fundamental in lending, regardless of its form, type, origin, or the party receiving the credit (Adinugroho, 1994).

Banks can maintain customer trust and ensure continued use of their services by exercising caution in their operations. Every industry and individual requires banking services as a service agent. Therefore, banks continuously strive to enhance public services by developing various products and offerings. The rapid advancement of the banking industry, supported by technology and scientific developments, has led to the emergence of innovative banking products and services. Examples include ATMs, mobile banking applications, e-banking, SMS banking services, digital account opening and deposit placement, fund transfers, digital payments, and more.

The banking industry has evolved through collaboration with fintech companies, securities firms, and insurance providers. As an intermediary institution, banks play a crucial role in channeling funds to economic actors in need of financial resources. In addition to this function, banks also provide services, build trust, and act as agents of development. Trust serves as the foundation for the public to deposit their funds in banks, enabling banks to fulfill their various functions using these public funds. Without public trust, it would be difficult for banks to accumulate funds, as they cannot rely solely on their own capital.

The fiduciary principle encompasses the awareness that all parties involved in a contract or agreement will fulfill their promises in the future (H.S., 2006). Given the critical role of trust in banking transactions, it is essential to establish more detailed and comprehensive internal regulations within banks regarding the fiduciary principle and its implementation in operations. The objective is to ensure that employees in the banking industry have a strong understanding of how to conduct daily operations and transactions in accordance with this principle.

Banks can maintain customer trust by applying the prudential principle in their operations, ensuring that customers continue to place their trust in the bank by utilizing its services. Establishing and maintaining long-term relationships with customers based on trust is a crucial success factor in building a strong business reputation for the banking industry.

Article 2 of Law No. 7 of 1992 on Banking states that "Indonesian banking operates based on the principle of economic democracy while applying the prudential principle." Although it does not explicitly mention the "fiduciary principle," this principle is inherently embedded in banking practices, as banks function as financial intermediaries that rely on public trust. This trust is also reflected in various regulations concerning licensing, transparency, consumer protection, and banking supervision by the Financial Services Authority (*Otoritas Jasa Keuangan* - OJK) and Bank Indonesia (BI).

Bank supervision is fundamentally based on three pillars: regulation, monitoring, and law enforcement. Regulation serves as the framework, monitoring as the oversight mechanism, and sanctions as the conscience of the system—each of which must be integrated and maintained in a balanced manner. In implementing these three pillars, BI and OJK play a significant role (Chandra, 2015). BI is responsible for formulating and implementing macroprudential policies, which involve maintaining overall financial system stability, monetary policy, and ensuring the smooth operation of the payment system. Meanwhile, OJK oversees microprudential aspects, ensuring the stability of individual financial institutions (including banks), establishing an integrated regulatory and supervisory system, and providing consumer protection. As a result, banks must comply with both BI and OJK regulations (Nusantara, 2023).

The fiduciary principle is reflected in various aspects of banking operations, such as the obligation to establish a robust and adequate security and internal control system to prevent data breaches and the misuse of customer information. Additionally, banks must ensure transparency in financial services, including interest rates, administrative fees, and investment risks. The fiduciary principle requires banks to provide safe financial products and services that align with customer needs while adhering to banking regulations. Banks are also responsible for ensuring legal accountability, including safeguarding customer data confidentiality, and exercising discretion in protecting their clients.

Mechanism of Customer Protection Based on the Fiduciary Principle in Banking

The role of customers significantly influences the growth of banks, leading to the consequence that a bank's sustainability depends on customer trust. How a bank safeguards its financial activities and transactions directly affects customer loyalty to banking services (Disemadi & Prananingtyas, 2019).Since banks manage customer funds based on trust, they have an obligation to protect, maintain, and safeguard customers who have entrusted their assets to them. The relationship between banks and customers is fundamentally based on agreements, making it essential for customer protection in banking to be conducted regularly and supported by legal enforcement to uphold customer trust.

Recognizing the crucial role of customers in banking activities and understanding the factors influencing customer loyalty, preventive measures must be taken to maintain their trust. First, the quality of facilities, which includes physical facilities such as product appearance, consistency between the introduced product quality and its actual performance, responsiveness to customer complaints, guarantees on purchased products, and attentiveness to customers. Second, corporate image, which encompasses the bank's history, financial success, industry relationships, reputation, social responsibility, and research commitment. A bank's image is essential as it influences all components within the institution and is shaped through credible information (Agung, 2006)

One of the primary functions of banking is to channel funds, which can take the form of credit or loans. In credit agreements or banking-related contracts, standard clauses (*klausula baku*) are commonly included as part of the agreement. A standard clause refers to any rule, condition, or requirement unilaterally determined by the bank and incorporated into a binding document or contract that consumers must adhere to (Heraini, 2022). As a result of these standard clauses, customers often have no opportunity to negotiate or modify the terms. However, while the inclusion of standard clauses is not prohibited, certain provisions are restricted, as stipulated in Article 18 of Law No. 8 of 1999 on Consumer Protection.

In principle, every piece of legislation aims to protect the rights of all parties. This includes laws governing banking activities, which provide legal protection for both banks and customers. One of the primary objectives of the Consumer Protection Law is to regulate the limitations associated with standard clauses, which are often unavoidable in business transactions. Article 1367 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*) states: *"Every unlawful act that causes harm to another person obligates the party responsible for the harm to provide compensation."* This provision serves as a

legal safeguard for the public, particularly banking customers, ensuring their rights are protected under the law.

Marulak Pardede, in his book *"Likuidasi dan Perlindungan Nasabah"*, states that there are two forms of customer protection in Indonesia's banking system: implicit protection and explicit protection (Pardede, 2023).Implicit protection refers to effective supervision and guidance of banks to prevent bankruptcy. This form of protection is achieved through banking regulations, supervision by Bank Indonesia, efforts to ensure the bank's business continuity, maintaining bank soundness, applying prudential principles in banking operations, granting credit in a manner that does not harm either the bank or customers, and providing beneficial financial services.

Explicit protection refers to the establishment of institutions that safeguard public deposits in the event of bank failure. These institutions ensure that depositors recover their funds from failed banks. One such institution is the *Lembaga Penjamin Simpanan* (LPS), or the Indonesia Deposit Insurance Corporation. Public trust in the banking industry is crucial for national economic stability, as the banking sector plays a vital role in the economy. To build and maintain this trust, legal certainty in banking regulation and supervision, as well as guarantees for deposit protection, are necessary (Kinot et al., 2022). LPS was established to restore public confidence following the 1998 monetary crisis. Its primary function is to protect public funds deposited in banks in cases of bank failure. The foundation for LPS was laid by Law No. 24 of 2004 on the Deposit Insurance Corporation, which mandates the institution's role in ensuring financial stability and safeguarding depositors' interests.

Bank Indonesia (BI), as the central bank, holds the responsibility for regulating and supervising the banking sector in Indonesia. BI's role can be categorized as an implicit effort to ensure the financial health of banks and ultimately maintain public trust. One of BI's primary duties is to regulate and oversee monetary policy, including controlling inflation and ensuring the stability of the rupiah exchange rate. Additionally, BI is responsible for granting operational licenses to banks, monitoring their compliance with regulations, and formulating policies related to interest rates and liquidity.

Additionally, the Financial Services Authority (*Otoritas Jasa Keuangan* or OJK), as an independent institution, is also responsible for regulating and supervising the entire financial sector, including banks. The key difference between BI and OJK lies in the scope of their supervision: BI focuses on macroprudential oversight, while OJK conducts microprudential supervision, overseeing individual banks. Both institutions also have the authority to impose sanctions on banks that violate regulations. In conclusion, BI and OJK play crucial roles in the regulation and supervision of Indonesia's banking sector and collaborate to achieve a common goal: the stability and security of the banking system.

Several forms of customer protection regulated by OJK include consumer protection, data and personal information protection, financial protection, and protection against harmful banking practices. These protections are established through OJK regulations, including Financial Services Authority Regulation No. 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector. Additionally, OJK issued Circular Letter No. 14/SEOJK.07/2014 concerning the Confidentiality and Security of Consumer Data and/or Personal Information. This circular mandates all financial service providers (*Pelaku Usaha Jasa Keuangan* or PUJK), including banks, to safeguard consumers'

personal data or information. With these regulations and OJK's supervision, it is expected that customers will feel protected and develop a high level of trust in the banking sector.

Consumer protection is a crucial aspect, particularly regarding the confidentiality of customer information and data. Banks have a responsibility to ensure the security and confidentiality of customers' personal data. These regulations apply to both individual and corporate consumer data, which must be kept secure at all times. For individual consumers, protected information includes names, addresses, dates of birth, ages, phone numbers, and mothers' maiden names. For corporate consumers, it includes company names, addresses, phone numbers, as well as the composition of the board of directors and commissioners. Additionally, protected corporate data may include identification details such as national identity cards, passports, residence permits, and the structure of shareholders.

Banks are required to establish a robust and adequate security system and internal control mechanisms to safeguard the confidentiality of consumer information and data. Additionally, banks must prevent data breaches or misuse of consumer information by implementing appropriate procedures for handling consumer complaints and strictly prohibiting third parties from disclosing consumers' personal data and information. By adhering to the principles of trust and maintaining the confidentiality of consumer data, banks can foster strong relationships with their customers, enhance public confidence in the banking system, and ensure optimal consumer protection in the provision of banking services.

If a dispute arises between a customer and a bank, the customer has the option to file a complaint and resolve the conflict through the Alternative Dispute Resolution Institution for the Financial Services Sector (*Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan* or LAPS SJK), established by the Financial Services Authority (OJK). However, it is important to note that dispute resolution through LAPS SJK cannot be initiated directly. According to Article 2 of OJK Regulation No. 1/POJK.07/2014 on Alternative Dispute Resolution Institutions in the Financial Services Sector, customers must first attempt to resolve the dispute directly with the Financial Services Provider (*Pelaku Usaha Jasa Keuangan* or PUJK), in this case, the bank. The internal dispute resolution process within the bank requires customers to file complaints through the bank's designated complaint-handling function (*Hukumonline.com*, 2016).

If internal dispute resolution does not result in an agreement between the customer and the bank, the customer may choose to resolve the dispute through either judicial or non-judicial means. If opting for a non-judicial resolution, the customer has two options: limited facilitation by OJK or resolution through LAPS SJK. The limited facilitation provided by OJK has certain restrictions, particularly in the banking sector, where the maximum eligible claim cannot exceed IDR 500,000,000 (five hundred million rupiahs). In this process, OJK appoints a facilitator to assist in resolving the complaint. If the customer and the bank reach an agreement, the outcome is documented in the form of a deed. However, if no agreement is reached, the customer may proceed with dispute resolution through LAPS SJK (*Hukumonline.com*, 2016).

Dispute resolution through LAPS SJK can be conducted through three mechanisms: mediation, adjudication, and arbitration. However, customers cannot directly choose adjudication or arbitration without first undergoing the mediation process. In mediation, the mediator acts as a facilitator to help both parties reach an amicable settlement. If mediation fails to produce an agreement, the customer may proceed with adjudication or

arbitration. It is important to note that both adjudicators and arbitrators have the authority to render binding decisions. The key difference between the two lies in the scope of claims: adjudication is typically used for small-scale and retail claims, while arbitration is applied to high-value, complex, and more intricate disputes (*Hukumonline.com*, 2016).

Conclusion

Based on the description and analysis presented above, this study yields two key conclusions:

1. The fiduciary principle is a fundamental element in Indonesia's banking industry. Customer trust serves as the primary pillar supporting the stability and sustainability of banking activities. In the regulatory context, this principle is reflected in Article 2 of Law No. 7 of 1992 on Banking, as well as in regulations issued by Bank Indonesia (BI) and the Financial Services Authority (OJK), consumer protection policies, and various aspects of banking operations. These regulations aim to ensure transparency, safeguard customer information confidentiality, and promote fair banking practices. Additionally, this principle enhances economic efficiency by facilitating secure and reliable financial transactions.
2. The customer protection mechanism, based on the fiduciary principle, has been implemented through various measures, including supervision by Bank Indonesia (BI) and the Financial Services Authority (OJK), the existence of the Deposit Insurance Corporation (*Lembaga Penjamin Simpanan* or LPS), the assurance of customer data security, and dispute resolution systems—whether through direct settlement between customers and banks, limited facilitation by OJK, or the Alternative Dispute Resolution Institution for the Financial Services Sector (*Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan* or LAPS SJK) under OJK's authority. These protective efforts underscore the importance of maintaining customer trust as a cornerstone of the banking sector's success. Thus, the sustainability of the banking industry heavily depends on banks' ability to uphold customer trust through the consistent application of the trust principle, effective regulations, and adequate protection mechanisms.

Author's Contribution

SFH is the principal author of this article and is responsible for conducting the research and presenting the findings.

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